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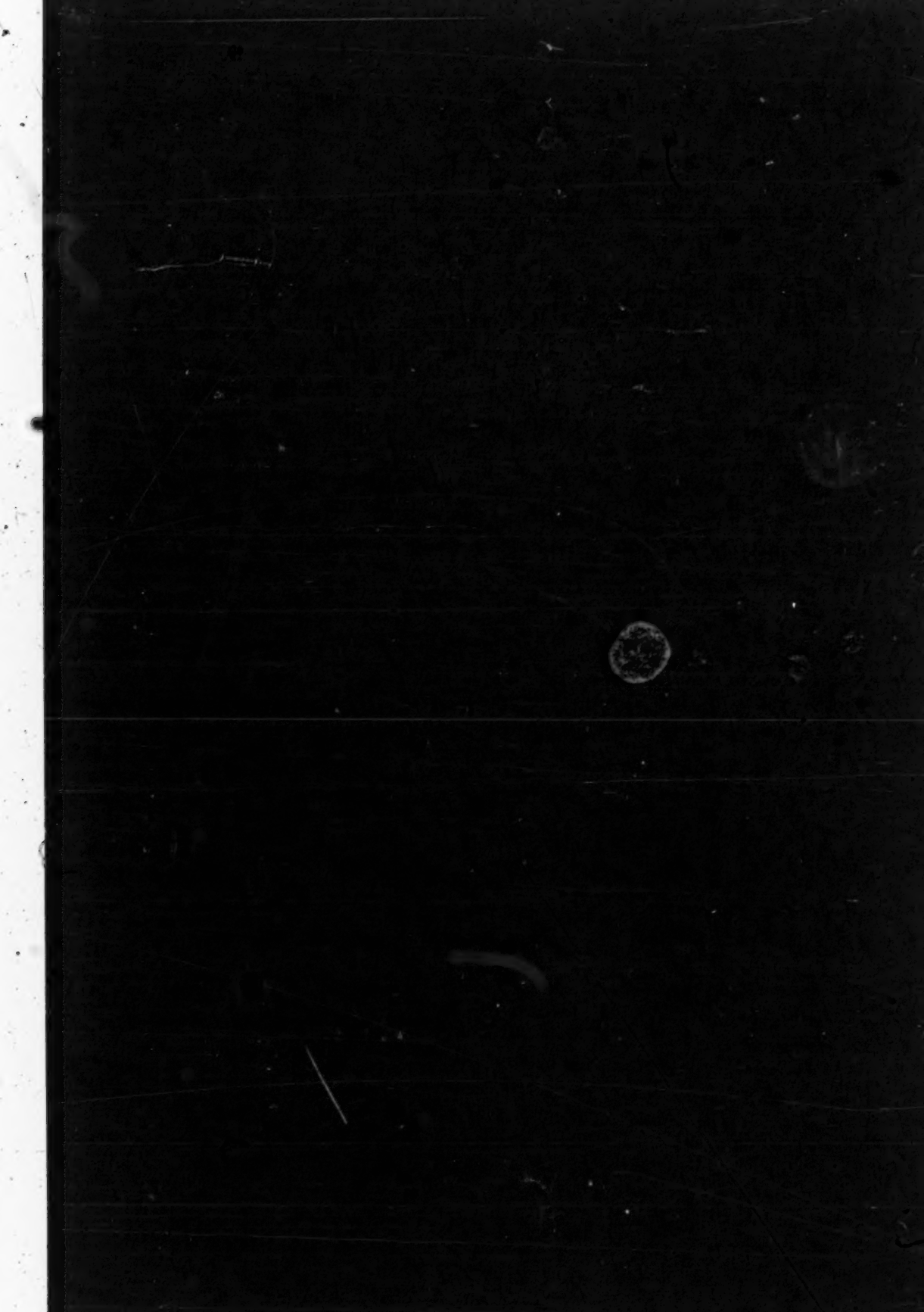
No. 1040

In the Supreme Court of the United States

October Term, 1970



In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 350

THE LOS ANGELES HERALD-EXAMINER, DIVISION OF THE HEARST CORPORATION, ET AL., PETITIONERS

v.

RALPH E. KENNEDY, REGIONAL DIRECTOR OF REGION 21 OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR RESPONDENT KENNEDY

1. In February 1968, upon the filing of a charge by petitioners that respondent unions were conducting a secondary boycott in violation of Section 8(b)(4)(B) (29 U.S.C. 158(b)(4)(B)) of the National Labor Relations Act, respondent Kennedy, the Board's Regional Director, obtained from the district court, pursuant to Section 10(l) (29 U.S.C. 160(l)) of the Act, an injunction against that activity pending a final determination by the Board (Pet. 4). In April 1970, because the Board had not as yet finally determined the matter, the district court, upon motion of the unions, dissolved the injunction it had previously

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issued (Pet. App. B, 4). The Regional Director appealed and, pending a determination of the appeal, obtained from the court of appeals a stay of the district's court's order dissolving the injunction (Pet. App. A, 2). Petitioners also appealed from the district court's order, but the court of appeals, accepting the contention of the Regional Director and the unions that the charging party was not a party in a Section 10(l) proceeding, dismissed petitioners' appeal and denied them leave to intervene (Pet. App. A, 1, 3). Petitioners, however, were permitted to file a brief *amici curiae,* and participated in the oral argument held on July 8, 1970.

2. The sole question the petition presents is whether the court of appeals correctly denied petitioners the right either to appeal or to intervene as a party in the appeal instituted by the Regional Director.[1] This issue—involving the status of the charging party in the interlocutory injunction proceeding provided for in Section 10(l) of the Act—is the same as that presented in *Sears Roebuck & Co.* v. *Local 419, Carpet Layers Union,* No. 476, O.T., 1969, certiorari granted, 396 U.S. 926; judgment vacated for mootness, 397 U.S. 655. Presumably, the considerations which prompted the Court to grant certiorari in *Sears Roebuck* would be applicable to the present petition.[2]

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[1] On July 8, 1970, Mr. Justice White denied petitioners' application for a stay of the court of appeals proceeding pending a final disposition by this Court of the present petition.

[2] But cf. *Los Angeles Herald-Examiner* v. *San Francisco-Oakland Newspaper Guild,* No. 409, O.T., 1968, certiorari denied, 393 U.S. 926.

3. This case is distinguishable from *Sears Roebuck*, however, because there the district court had denied an injunction, the Regional Director had declined to appeal and the court of appeals had dismissed the charging party's appeal, thereby terminating the appellate proceeding. Here, on the other hand, the Regional Director has appealed the district court's dissolution of the injunction, and petitioners participated in that appeal in a substantial way. Should the court of appeals reverse the district court and continue the injunction in effect, there would be no substantial prejudice to petitioners resulting from denying them the right to appeal or to intervene in the Regional Director's appeal.[3] Petitioners would suffer substantial prejudice only if the court of appeals were to sustain the dissolution of the injunction; because they are not parties to the case, petitioners could not file a petition for a writ of certiorari to review that judgment. But the Regional Director might file a petition; or the Board by then might have decided the underlying unfair labor practice case, in which event the injunction issue would become moot. *Sears Roebuck, supra.* Thus, the court of appeals' ruling of which petitioners here seek review does not

[3] Should the unions file a petition for a writ of certiorari, petitioners could present their opposition thereto only as *amici curiae*.

have the same impact upon the charging party as did the ruling in *Sears Roebuck*.

Respectfully submitted.

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Solicitor General.

ARNOLD ORDMAN,
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JULY 1970.

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